

COMMERCIAL LAW DEVELOPMENT PROGRAM
OFFICE OF GENERAL COUNSEL
U.S. DEPARTMENT OF COMMERCE
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MISSION

The mission of the US Department of Commerce Commercial Law Development Program (CLDP) is to improve the legal environment for doing business in developing and transitional countries around the globe, and thereby foster greater political stability and economic opportunity for local entrepreneurs and U.S. companies alike.

METHODS AND ISSUES

CLDP consultative services and training programs assist political, regulatory, judicial and commercial leaders to identify and make needed improvements in their policies, laws and organizational structures. CLDP activities are designed to meet the evolving needs of its hosts. They include, among other things, major conferences that introduce large groups to new issues, highly technical skills training for small cadres of local experts and resident (or itinerant) consultants who spend significant time working in a country executing longer-term projects or consulting on issues that benefit from on-going cooperation. CLDP activities serve as a catalyst for change, enabling leaders to take steps that, while important for the long term economic health of their nation, may be difficult in the short term. As a U.S. federal agency, CLDP is particularly strong in providing government-to-government assistance and in helping governments and their business communities to communicate more effectively. Most CLDP activities are funded by the US Agency for International Development.

During fiscal year 2002, CLDP conducted 92 discrete technical assistance activities through which approximately 4,900 host country individuals received training or consultative support. This is in addition to the daily assistance provided by CLDP's overseas offices and resident advisors and the information provided by the websites and newsletters CLDP sponsors.

A significant portion of CLDP's activities support WTO accessions and implementation of WTO disciplines including laws and procedures affecting intellectual property rights, customs valuation, market access, trade remedies, and product standards, among other things. In addition to its work with respect to WTO disciplines, CLDP provides technical assistance with respect to mortgage, insurance and other financial service regulatory matters, government, judicial and business ethics, public procurement, electronic commerce, anti-trust, privatization of state-owned enterprises, alternative dispute resolution, investment, judicial case management, trade policy analysis, econometric modeling, project finance, trade finance, spectrum management, public notice and comment processes and negotiation skills.

CLDP also provides support to local business, research and governmental organizations that promote private sector participation in trade policy formation and regional legal harmonization (merging common law and civil law traditions, for example) and regional economic integration (simplifying cross-border trade within a region).

In addition to its policy and skills oriented activities, CLDP works with leaders to develop more effective intra-ministerial and intra-governmental organizational structures and administrative procedures.

RESULTS

Since its inception in 1992, CLDP has provided technical assistance to more than fifty countries in Central and Eastern Europe, the former Soviet Union, the Middle East, Northern and Sub-Saharan Africa and South-East Asia. In addition to maintaining full-time advisors and assistance support offices in Moscow, Kiev, Chisinau, Riga, Vilnius, Tallinn, Bucharest, Sofia and Tirana over the years, CLDP has conducted more than 300 separate training and short-term consultation programs and provided training to more than 8,000 policymakers, regulators, judges, lawyers, teachers and business persons

CLDP provided WTO accession technical assistance to six of the first eight post-Soviet states to join the WTO (Bulgaria, Estonia, Latvia, Lithuania, Albania and Moldova). CLDP also is working with the governments of Russia and Ukraine to facilitate their WTO accessions. CLDP continues to provide assistance to Moldova, Albania, Egypt, members of the Southern African Development Community and other nations struggling to implement their WTO commitments.

CLDP assistance has been instrumental in public procurement reform, adoption of investment, intellectual property, insurance, mortgage, and a wide range of other legislative and regulatory reforms in many of its host countries. CLDP has assisted with the creation or reorganization of trade policy agencies in Eastern Europe, the Middle East and Northern Africa, anti-monopoly offices in Northern Africa and Eastern Europe, and intellectual property regulatory and business organizations in Nigeria, to name a few.

CLDP also has served as a catalyst for regional economic integration in Eastern Europe, Sub-Saharan Africa and Western Africa through facilitation of the negotiation and implementation of free trade agreements and the creation or strengthening of regional organizations working to promote harmonization of laws, regulatory procedures and dispute resolution mechanisms of importance to business.

CLDP is working with all of its host countries to promote more transparent decision making and, in particular, to involve businesses in the formation of policies that affect them. These efforts have resulted in the first-ever public outreach programs conducted

by the Russian Ministry of the Interior and regular business outreach programs by the Albanian Ministry of Trade and Industry, to cite but two examples.

In addition to the direct results of its technical assistance, CLDP has found that its activities have equally important indirect benefits.

First, the exposure to new, market-oriented ideas helps host country participants to explore concepts that may be totally unfamiliar to them or with which they may have only enough familiarity to feel uncomfortable, and therefore resistant, when expected to incorporate the concepts into their daily work. Having the opportunity to discuss the concepts with knowledgeable parties outside the context of a specific negotiation or decision enables them to become comfortable with the issue, to understand its broader significance and to understand how it affects their role and the concerns of their constituencies. This, in turn, results in more effective participation in future negotiations and better decision-making when presented with these issues in the course of their work.

Second, experience has shown that principles shared during the course of technical assistance activities blend into other aspects of the participants' lives. An official who grasps the benefits of transparency and has learned to incorporate transparent procedures in one aspect of his work, for example, is more likely to incorporate such procedures in additional aspects of his work, and to demand that others do the same.

Third, the opportunity to discuss issues of common interest outside the demands of our official relationships has enabled all participants, whether from the US or abroad, to develop a better understanding of the challenges we all face, the special obstacles that each country must grapple with and the values and processes we are applying when making decisions. Counterparts from both countries also have an opportunity to spend time working together toward a common objective. All of this leads to better communication and generally better cooperation in the future; we and our overseas partners know who to call if a question or a problem arises and what each of us is likely to consider in trying to address the matter.

SYNOPSIS OF CLDP PROGRAMS

CLDP has conducted too many assistance activities to note here with any completeness, but the following provides a brief synopsis of its work.

Central and Eastern Europe

CLDP assistance in Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Romania and Bulgaria and Albania concentrated on WTO accession, public procurement, government ethics, intellectual property rights, foreign investment, project and trade finance, customs, export controls and product standards matters. The countries with which CLDP worked on WTO accession and export control matters all

succeeded in joining the WTO in relatively short order after CLDP began working with them and all became founding members of the Wassenauer Arrangement. These CLDP programs (other than in Albania) ended in the mid-90s when AID closed or curtailed its funding for work in those countries.

In 2000, CLDP returned to the region as part of the USG's Stability Pact activities with the twin objectives of promoting trade liberalization in each of the countries in the region and promoting greater trade and economic integration within the region. CLDP and other donors are working with Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania and Yugoslavia on this project.

In addition to these regional efforts, CLDP has been working with Albania continuously since 1992, first to help with the creation of key commercial laws and the introduction of market-oriented policies, then to support Albania's WTO accession and now to aid implementation of its obligations as a new member and to strengthen its technical capacity to make sound trade policy decisions.

New Independent States

CLDP began working with Russia, Ukraine and Moldova in the mid-1990's to facilitate their accessions to the WTO, including the policy, legislative, regulatory, negotiation, communication and other skills development work inherent in those countries' transition to market economies and to WTO compliance. The focus of CLDP's work in Moldova shifted to implementation with their recent accession. CLDP's Ukrainian program continues to support the working party process, but has a particular emphasis on improving intellectual property rights protection. In addition to ongoing efforts to support the working party process and legislative reform, CLDP's activities in Russia have added significant efforts to encourage public outreach and to assist with sub-national implementation of WTO commitments that Russia will be making. CLDP also conducted a limited program in Russia with the objective of improving communication among Russian law enforcement bodies and between them and the Russian business community, particularly US businesses operating in Russia.

Middle East and North Africa

CLDP's Egypt program is quite eclectic, incorporating work in intellectual property rights, trade policy, anti-trust, trade remedies, alternative dispute resolution, mortgage and insurance regulation, e-commerce-related spectrum management issues, and training of diplomats in economic policy and international commerce issues, among other things. CLDP, which was a relative late-comer to the Egyptian assistance provider community, has been able to work very successfully with other assistance providers to complement their work by providing information or advisors to which they did not have the same level of access as CLDP or by being able to fill specific assistance requests on very short notice.

CLDP's work in Northern Africa (Tunisia, Algeria and Morocco) has been split among electronic commerce, public procurement, anti-trust and insurance regulation issues.

The Department of State has indicated that it intends to fund CLDP work to support the Moroccan Free Trade Agreement negotiations and implementation and to develop a government integrity and transparency program for North Africa, the Middle East and the Gulf as part of the Middle East Partnership Initiative.

Sub-Saharan Africa

In West Africa, CLDP activities address alternative dispute resolution, judicial case management, intellectual property rights, judicial ethics and investment codes and have fostered creation of several international committees, all with the overall objective of increasing regional legal integration. Countries participating in the West Africa program include Benin, Burkina Faso, Cameroon, Chad, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Nigeria, Senegal and Togo.

In Nigeria, CLDP's work has concentrated on improving the protection of intellectual property rights through strengthening the public and private stakeholder organizations, fostering dialog between them modernizing the legislative and regulatory framework for protection of patents, trademarks and copyrights and increasing public appreciation of the value of (and need to respect) intellectual property rights.

CLDP worked with the Southern African Development Community (SADC) to help its members self-diagnose compliance with their TRIPs obligations and to develop strategies for bringing themselves into compliance and for using the SADC administrative structures to facilitate that result. Countries participating in the SADC program, which has now concluded, were Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

CLDP has been working with Angola to introduce modern judicial case management techniques into the Angolan courts to support their efforts to improve both the speed and transparency with which matters are handled by the court.

CLDP also conducted four programs this past year to introduce sub-Saharan business persons to the African Growth and Opportunity Act (AGOA) and teach them how to take advantage of its incentives. Business and government representatives from Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Cote d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe attended the AGOA programs.

Asia

Ad hoc funding arrangements have enabled CLDP to conduct a limited amount of work in Asia.

A CLDP-sponsored consultant worked with Vietnamese officials to draft Viet Nam's first commercial code and CLDP staff members have provided support on WTO and trade policy making concepts.

In April of 2000, CLDP Chief Counsel Linda Wells participated in a two-week State Department Rule of Law program designed to share WTO-related information with the Chinese and to gauge their knowledge of the issues and their receptiveness to potential technical assistance on WTO and other commercial law matters. The 2002 annual report of the Congressional-Executive Commission on China included a recommendation that Congress appropriate funds to establish a CLDP commercial rule of law program with China and CLDP is working with DOC and Congressional staffers to secure funding.

Latin America

CLDP has been asked on a number of occasions to provide technical assistance to nations in the Western Hemisphere, particularly with respect to transparency and trade issues. Several states have indicated that they would like CLDP support as they prepare to enter into the Free Trade Agreement of the Americas and the intermediate agreements that will lead to it. CLDP is seeking the funding needed to fulfill such requests.

For additional information, please contact the CLDP office in Washington, DC.

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